

## Alert | Labor & Employment



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### Illinois to Require Paid Time Off for ‘Any Reason’: The ‘Paid Leave for All’ Act

#### Go-To Guide:

- Illinois third state to require paid leave for all employees **for any purpose**
- Effective **Jan. 1, 2024**
- Threshold coverage applies to **all** employers, irrespective of size (other than school and park districts).
- Exempts employers **currently** providing paid sick leave under city or municipal requirements
- Requires **all** employers to review and provide written notice of policy changes to employees

On March 13, 2023, Governor J.B. Pritzker signed into law [SB 208](#), a bill requiring Illinois employers to provide up to five days paid time off for “any reason.” Unlike federal laws, there is no exception based on the size of the employer, and the law also covers exempt employees who are often not covered by wage and hour laws. While a number of state, county, and city initiatives across the nation have focused on paid sick leave mandates, Illinois joins Maine and Nevada as one of only three states that will require employers to allow leave “for any reason.”

### Effective Date

Starting Jan. 1, 2024 (or as of the first day of employment for employees hired after Jan. 1, 2024), Illinois employers must allow employees to accrue up to five days paid time off after an employee has worked for 90 days. Employers should, therefore, be prepared to accommodate such leaves on March 31, 2024.

### Scope of Coverage

The law will apply to almost every employee working in Illinois, including domestic workers. However, the law does not apply to the following:

- school districts organized under the School Code or park districts organized under the Park Code
- any employee who is covered by a collective bargaining agreement working in (a) the construction industry (broadly defined to include moving construction-related materials to job sites, snow plowing, snow removal and refuse collection), (b) national or international logistic services (delivery, pickup, or transportation), or (c) a State Agency that is in effect as of Jan. 1, 2024 (any State Agency formed after Jan. 1, 2024, will require waiver in writing)
- any employee working in any industry covered under a bona fide collective bargaining agreement (CBA), so long as waiver of the new law is conspicuously in writing and included in the CBA
- an employee as defined in the federal **Railroad Unemployment Insurance Act** (45 U.S.C. 351 *et. seq.*) or the **Railway Labor Act** (45 U.S.C. 8 *et. seq.*);
- a student enrolled in, and regularly attending, classes in a college or university that is also the student's employer, and who is employed on a temporary basis at less than full time at the college or university; This exclusion applies only to work performed for that college or university; and
- a short-term employee who is employed by an institution of higher education for less than two consecutive calendar quarters during a calendar year, and who does not have a reasonable expectation that they will be rehired by the same employer of the same service in a subsequent calendar year.

**SPECIAL NOTE:** Employers already covered under the Cook County Sick Leave or Chicago Sick Leave Ordinances, which have been in place since 2017, are grandfathered for compliance purposes. Those employers located in the many local governments who opted out of the Cook County Sick Leave requirements, however, must comply with this new law, which prohibits municipalities from now “opting in” to alternative paid sick leave requirements to avoid compliance.

### Requirements

The new law requires an employer to provide up to five paid days during a one-year measurement period. Calculation of a one-year measurement period is based on a rolling calendar year period as designated by the employer in writing. Employees will accrue one hour of paid leave for every 40 actual work hours (including if worked on an overtime basis). Exempt employees will be deemed to have worked 40 hours each week. Any unused days do not have to be credited to the next designated year period so long as the statutory minimum requirements are met. Unless otherwise consistent with other employer standards, any accrued yet unused paid time under this law does not have to be paid upon termination. Employers may also draft policies limiting the use of such leave to two hours a day.

Employers may not require that their employees submit specific documents prior to taking such leave, nor may employers inquire why the employee is taking the time off. Employers can require notice, such that leaves for “foreseeable” reasons require at least seven days’ notice. When the need for leave is not foreseeable, notice is required as soon as “practicable.”

### Enforcement

As with other wage and hour laws, the new law will be enforced by the Illinois Department of Labor (IDOL), which has the sole statutory authority to pursue remedies on the employee’s behalf. There is no private right of action. This new law also has an anti-retaliation provision. In addition to other remedies, proven violations may result in direct employer liabilities of compensatory damages, plus a penalty of between \$500.00 and \$1,000.00. There also is a civil penalty of up to \$2,500 for “each separate offense” (which IDOL recently clarified to mean each individual occurrence with respect to an ongoing practice), which will be paid into a special “Paid Leave For All Employees” fund, a “special fund created in the State treasury that is dedicated to enforcing the Act.”

### Guidance

There are no implementing regulations at this point, leaving questions as to how this law will be implemented and enforced. For example, it remains to be seen how an employer is to determine whether the reason for the leave was foreseeable or not if the employer may not inquire as to the reason for the leave. There is no need to add to existing paid leave policies or provide additional paid time off where policies already provide a sufficient amount of leave “for any reason.” Whether “Vacation” or other employer-designated leave policies will meet this undefined standard remains to be seen until IDOL provides regulatory guidance.

### Next Steps

Employers should continue to watch for regulatory developments before the Jan. 1, 2024, effective date and consider how to incorporate the “for any reason” concept into their current leave policies. Further, employers will be required to post notices and provide written notice of these statutory rights. To ensure compliance with this new law, as well as many other wage and hour requirements, Illinois employers must also ensure all employee leave is properly accrued and tracked, and should retain those records for at least three years.

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